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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 NAUTILUS GROUP, INC.,

7 Plaintiff,

8 v.

9 ALLIANZ GLOBAL RISKS U.S.,

10 Defendant.

CASE NO. C11-5281BHS

ORDER DENYING
DISCOVERY REQUEST

11 This matter comes before the Court on the parties' joint discovery submission
12 (Dkt. 26). The Court has reviewed the briefs filed in support of and in opposition to the
13 motion and the remainder of the file and hereby denies the request for discovery for the
14 reasons stated herein.
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16 **I. PROCEDURAL HISTORY**

17 On March 18, 2011, Plaintiff Nautilus Group, Inc. ("Nautilus") filed a complaint
18 against Defendant Allianz Global Risks U.S. ("Allianz") in Clark County Superior Court
19 for the State of Washington. Dkt. 1. Nautilus alleges various causes of action based on
20 Allianz's denial of coverage under an insurance contract. *Id.* On March 13, 2011,
21 Allianz removed the matter to this Court. *Id.*

22 On December 2, 2011, Allianz filed a motion for judgment on the pleadings
23 arguing that, even if all of the facts alleged in the complaint are assumed to be true,
24 Nautilus has failed to state a cause of action. Dkt. 25. On January 30, 2012, Nautilus
25 responded. Dkt. 28.

26 On January 11, 2012, the parties filed a joint discovery submission pursuant to
27 Local Rule CR 37. Dkt. 26. Nautilus requests production of Allianz's claim file while
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1 Allianz argues that the claim file is irrelevant for the threshold dispositive coverage issue.
2 *Id.*

3 II. DISCUSSION

4 “After the pleadings are closed—but early enough not to delay trial—a party may
5 move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). “Judgment on the pleadings
6 is proper when the moving party clearly establishes on the face of the pleadings that no
7 material issue of fact remains to be resolved and that it is entitled to judgment as a matter
8 of law.” *Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc.*, 896 F.2d 1542, 1550
9 (9th Cir. 1990). The standard applied on a Rule 12(c) motion is essentially the same as
10 that applied on a Rule 12(b)(6) motion for failure to state a claim upon which relief may
11 be granted. *Id.*

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13 Motions to dismiss for failure to state a claim may be based on either the lack of a
14 cognizable legal theory or the absence of sufficient facts alleged under such a theory.
15 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). Material
16 allegations are taken as admitted and the complaint is construed in the plaintiff’s favor.
17 *Keniston v. Roberts*, 717 F.2d 1295, 1301 (9th Cir. 1983). To survive a motion to
18 dismiss, the complaint does not require detailed factual allegations but must provide the
19 grounds for entitlement to relief and not merely a “formulaic recitation” of the elements
20 of a cause of action. *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1965 (2007).
21 Plaintiffs must allege “enough facts to state a claim to relief that is plausible on its face.”
22 *Id.* at 1974.

23 In the event a court finds that dismissal is warranted, the court should grant the
24 plaintiff leave to amend unless amendment would be futile. *Eminence Capital, LLC v.*
25 *Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

26 In this case, Allianz moves for judgment on the pleadings as a matter of law.
27 Allianz’s position is not that Nautilus has failed to allege sufficient facts under a
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1 cognizable legal theory, but that Nautilus has failed to state a cognizable legal theory
2 assuming every alleged fact is true. Specifically, Allianz contends that there is no
3 coverage under the insurance contract based on the facts set forth in the complaint. Thus,
4 any discovery at this stage of the proceeding is unnecessary. If it is determined that
5 Nautilus has failed to assert a cognizable legal theory, then additional facts would be
6 irrelevant because any amendment would most likely be futile. If it is determined that
7 Nautilus has failed to allege sufficient facts under a cognizable legal theory, then Nautilus
8 will most likely be allowed leave to amend. *Eminence Capital*, 316 F.3d at 1052.

9 Furthermore, the parties have not presented the Court with an appropriate
10 discovery dispute. It has not been shown that Nautilus has properly requested production
11 of discovery or that Allianz has had an opportunity to properly object to the request.
12 While the Court recognizes the parties' desire to reduce the cost of litigation pending the
13 outcome of a threshold dispositive issue, the briefing before the Court shows that this
14 issue is an underdeveloped dispute between the parties rather than a failure to produce
15 relevant discovery that necessitates an order to compel.
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17 **III. ORDER**

18 Therefore, it is hereby **ORDERED** that Nautilus' request that Allianz produce its
19 claim file is **DENIED** as premature and improperly presented.

20 DATED this 3rd day of February, 2012.

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23 BENJAMIN H. SETTLE
24 United States District Judge
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